REMARKS

Applicants thank the Examiner for the careful and thorough examination of the present application, and for the courtesy extended during the telephone interview of October 20, 2008. By this amendment, the Abstract is amended to eliminate minor informalities and more closely conform with U.S. practice. Claim 1 has been amended as agreed upon during the interview and as discussed below. Claims 1-27 remain pending in the application. Favorable reconsideration is respectfully requested.

I. The Claims are Patentable

A. The Subject Matter Rejection

Claims 1-27 were rejected under 35 U.S.C. §101 for the reasons set forth on pages 2-3 of the Office Action and discussed during the telephone interview. Applicants contend that Claims 1-27 clearly define statutory subject matter, and in view of the following remarks, favorable reconsideration of the rejection under 35 U.S.C. §101 is requested.

The Examiner explained that the scope of the term "medium" in Claim 1 could include "a transmittable signal" which is non-statutory subject matter. Although Applicants disagree with the Examiner, to advance prosecution of the present application, Applicants agreed to amend independent Claim 1 to recite -a computer readable hardware structure- which is intended to encompass removable and non-removable

storage structures, e.g. hard disks, CD-ROMs and flash drives, and not a transmittable signal.

As also discussed during the telephone interview, independent method Claim 18 does not include the term "medium". Claim 18 is directed to a method for using voice traffic to reproduce a user experience for facilitating troubleshooting problems with at least one VoIP communication.

As Set forth in MPEP 2106.01:

> Computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program. Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material per se and hence nonstatutory.

Accordingly, for at least the reasons given above, Applicants maintain that the claimed invention is directed to statutory subject matter. Thus, the rejection under 35 U.S.C. §101 should be withdrawn.

B. The Double Patenting Rejection

Claims 1-27 were rejected under the doctrine of obviousness-type double patenting as being unpatentable over Claims 1-23 of U.S. Patent No. 7,369,509 for the reasons set forth on pages 3-4 of the Office Action. Applicants contend

the Claims 1-27 are patentably distinct from Claims 1-23 of U.S. Patent No. 7,369,509 and in view of the following remarks, favorable reconsideration of the obviousness-type double patenting rejection is requested.

The Examiner that the allegedly conflicting claims "are similar in scope…only with obvious wording variations." No analysis of the claimed inventions was provided by the Examiner.

As discussed during the telephone interview, Applicants pointed out that, in accordance with MPEP §804, since the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. 103(a) rejection, the factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103 are employed when making an obvious-type double patenting analysis. The conclusion of obviousness-type double patenting is made in light of these factual determinations.

Any obviousness-type double patenting rejection should make clear: (A) The differences between the inventions defined by the conflicting claims - a claim in the patent compared to a claim in the application; and (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue would have been an obvious variation of the invention defined in a claim in the patent.

As such, Applicants maintain that the Examiner failed to meet the burden of establishing a prima-facie case of obviousness-type double patenting.

Furthermore, the approach set forth in independent Claims 1 and 23 of U.S. Patent No. 7,369,509 includes: identifying data packets of said network traffic data indicative of VoIP signaling information or voice communications; determining if said identified packets are associated with said at least one VoIP station; determining whether a quality of the VoIP session was acceptable substantially simultaneously with the VoIP session; and, at least temporarily storing at least a portion of said identified packets determined to be associated with the at least one VoIP station when the VoIP session is determined to of an unacceptable quality.

The approach set forth in independent Claim 1 of the present application includes: retrieving packets of said voice data traffic associated with the at least one of the VoIP stations; identifying time stamps associated with said retrieved packets; determining an amount of jitter associated with each of said retrieved packets at least partially dependently upon said identified time stamps; determining whether each of said retrieved packets will fit into a jitter buffer at least partially dependently upon said determined amounts of jitter; dropping select ones of said retrieved packets dependently upon said determining whether each of said retrieved packets will fit into said jitter buffer; and, filling a buffer with at least select ones of said retrieved

data packets not dropped. And, the method of independent Claim 18 includes: identifying at least one jitter buffer characteristic associated with the at least one VoIP communication; accessing data packets of said VoIP traffic associated with the at least one VoIP communication; identifying time stamps associated with said accessed data packets; and, dropping select ones of said accessed data packets dependently upon said identified at least one characteristic and identified time stamps.

As can be seen from a careful review of the allegedly conflicting claims, the approaches are only related in one sense. The packets retrieved at the beginning of the present approach may be the packets temporarily stored at the end of the patented approach. This aspect is discussed on pages 7-8 of the present specification. Thus, the claimed inventions are not similar in scope and do not only include obvious wording variations as alleged by the Examiner.

Accordingly, for at least the reasons set forth above, Applicants maintain that the obviousness-type double patenting rejection is erroneous and should be withdrawn.

II. Conclusion

In view of the foregoing remarks, it is respectfully submitted that the present application is in condition for allowance. An early notice thereof is earnestly solicited. If, after reviewing this Response, there are any remaining informalities which need to be resolved before the application can be passed to issue, the Examiner is invited and

respectfully requested to contact the undersigned by telephone to resolve such informalities.

Respectfully submitted,

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